

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

CRP.No. 2256 of 2000(E)

CC.148/73/TLB/TVPM of TALUK LAND BOARD, TRIVANDRUM

REVN. PETITIONER:

STATE OF KERALA

BY GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKEN

RESPONDENTS:

ABDUL RAHIM, T.P.BUNGLOW,
T.C.17/2177, POOJAPPURA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.UNNIKRISHNON
SRI.P.V.RAMESH SHANKAR
SRI.G.P.SHINOD
SRI.P.SUKUMARAN NAYAR(SR.)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 2256 OF 2000 E

Dated this the 27th day of November, 2007

ORDER

The State has filed this Revision challenging the order dated 10.11.1999 in No.148/73, on the file of the Taluk Land Board, Thiruvananthapuram.

2. The proceedings were initiated on the basis of a statement under Section 85A of the Kerala Land Reforms Act, filed by the declarant Sri.Abdul Rahim, who is the respondent in this Revision. The Taluk Land Board considered the objections raised by the declarant and by its final order dated 12.7.1976, held that the declarant is liable to surrender an extent of 5.40.332 acres of land as excess land. Against that order, the declarant filed C.R.P.No.3679 of 1976 before this Court, which was disposed of by the order dated 6.9.1978. The revisional court directed the Taluk Land Board to consider the matter afresh on certain matters which were specifically ordered. Thereafter, the Taluk Land Board considered the case in the light of the order in C.R.P.No.3679 of 1976 and passed an order dated 12.8.1981 holding that the declarant is liable to surrender an extent of 4.25.332 acres of land. The order dated 12.8.1981 was challenged by the declarant in C.R.P.No.3422 of 1981. As per order dated 25.1.1984, this Court directed the Taluk Land Board to consider the case in respect of 1.28 acres of land covered by the purchase certificate in O.A.No.806 of 1975.

3. In C.R.P.No.3422 of 1981, the declarant raised a contention that seven cents of land in Sy.No.447/B is liable to be excluded. That contention was accepted by this Court as per the order dated 25.1.1984. Another contention put forward by the declarant was in respect of 1.28 acres. It was contended that this extent of land is liable to be excluded from the total area included in the account of the declarant as the extent of 1.28 acres was assigned by the Land Tribunal concerned in favour of a third party as per its order in O.A.No.806 of 1975. A purchase certificate was also issued by the Land Tribunal in favour of the tenant in respect of that land. The State contended that the purchase certificate was not genuinely issued and that the proceedings before the Land Tribunal are vitiated by fraud and collusion. This contention was dealt with by this Court in the order dated 25.1.1984 in C.R.P.No.3422 of 1981 thus:

“... The next contention is that 1.28 acres covered by a purchase certificate issued by the Land Tribunal in O.A.No.806/75 ought to have been excluded from the total extent. It is not disputed that there is a purchase certificate issued by the Land Tribunal. Though there is a purchase certificate only if the conditions insisted by the judgment of the Supreme Court in Mathew & others v. Taluk Land Board (1979 K.L.T. 601) are satisfied, the Taluk Land Board can ignore that purchase certificate. Though some reasons are given by the Taluk Land Board, the Taluk Land Board has not considered the matter in the proper perspective. So it goes without saying that the inclusion of 1.28 acres in the total extent of the lands of the petitioner has to be considered afresh by the Taluk Land Board in the light of the decision mentioned above and a decision taken...”

4. In C.R.P.No.3422 of 1981, the declarant/revision petitioner raised other objections as well. But, this Court held that those objections could not be considered in view of the order in C.R.P.No.3679 of 1976. It was held thus:

“.. The other objections raised by the petitioner cannot now be considered in view of the order of this court in C.R.P.No.3679/76 which the petitioner filed against the first order of the Taluk Land Board in the ceiling case.”

5. Thus it can be seen that the only point which was directed to be considered by the Taluk Land Board was in respect of 1.28 acres of land covered by the purchase certificate in O.A.No.806 of 1975.

6. The Taluk Land Board, as per the final order dated 10.11.1999, which is impugned in this Civil Revision Petition, held that 1.28 acres covered by the purchase certificate in O.A.No.806 of 1975 is liable to be excluded from the account of the declarant. The proceedings for issue of purchase certificate were initiated in 1975 and the Land Tribunal has issued the purchase certificate on 15.3.1976. The Taluk Land Board, after considering the facts and circumstances of the case, came to the conclusion that the extent of 1.28 acres of land is liable to be excluded. I do not think that there is any illegality or irregularity in the proceedings of the Taluk Land Board in excluding the extent of 1.28 acres of land from the account of the declarant.

7. The Taluk Land Board did not stop with the case in respect of 1.28 acres. Objection dated 7.6.1990 was filed by the declarant in respect of other matters as well, which were foreclosed by the order in C.R.P.Nos.3422 of 1981 and 3679 of 1976. The Taluk Land Board entertained that objection, considered the same and excluded an extent of 16 cents of land in Sy.Nos.400 A and B, on the ground that this extent happened to be a duplication in the draft statement. The Taluk Land Board in this context held thus:

“... Another contention of the declarant raised before the Taluk Land Board on 22-1-76 and 22-12-88 was that an extent of 11 cents and 5 cents in Sy.Nos.400 A and 400 B of Muttathara Village are wrongly included in the total extent of the land held by the declarant by inadvertence. The total extent as per items Nos.8 in the draft statement is only 21 cents (5 cents in Sy.No.402, 11 cents in Sy.No.400 A and 5 cents in Sy.No.400 B). By oversight this extent of 16 cents (11 + 5 cents in Sy.No.400 A & B) has been entered separately in the draft statement, Trivandrum is actually a duplication. Hence the same extent of 16 cents has to be excluded from the total extent of the declarant.

As per the High Court's direction the extent of 7 cents in Cy.No.447/B of Iranimuttom (now Manacaud) Village has been deleted from the total extent of the declarant and the case was posted for hearing on different dates. The concerned parties and legal heirs of the declarant have been heard and the following points are found true to the Taluk Land Board.

On verification of the partition deed no.1379 of 1968 of Schedule (D) it is found that the above contention against the 16 cents in Sy.Nos.400 A & B was actually a duplication and the same extent is hereby excluded.”

8. Though strictly speaking, the Taluk Land Board was not justified in entertaining the objections which were already raised in 1976 and 1988 and though it could not have enlarged the scope of the remand order, I am of the view that if, on the facts, the Taluk Land Board was right in holding that there was duplication, there was power for the Taluk Land Board to delete the said extent of land exercising its jurisdiction under Rule 136A of the Kerala Land Reforms (Tenancy) Rules, 1970. Rule 136A reads as follows:

“136A. Correction of mistakes in orders of Land Tribunal or the Taluk Land Board and Land Board:-- Clerical or arithmetical mistakes in orders of the Land Tribunal or the Taluk Land Board or the Land Board or errors arising therein from any accidental slip or omission may at any time be corrected by the Land Tribunal or the Taluk Land Board or the Land Board as the case may be either of its own motion or on the application of any of the parties.”

The power conferred on the Taluk Land Board under Rule 136A can be exercised at any time either suo motu or on application. The case was remanded to the Taluk Land Board with certain specific directions. Still the power to correct mistakes in respect of other matters could be exercised by the Taluk Land Board invoking Rule 136A of the Kerala Land Reforms (Tenancy) Rules. The Taluk Land Board found that there was duplication in respect of 16 cents of land. I am of the view that the Taluk Land Board was right in excluding this extent of 16 cents of land from the account of the declarant.

9. Another point which the Taluk Land Board considered, which according to the learned Government Pleader was absolutely without jurisdiction, was in respect of an extent of 46.5 cents in Sy.No.4/1A. A contention was put forward by the declarant before the Taluk Land Board that this extent of 46.5 cents was acquired by the Government for the establishment of fishermen's colony even before 1.1.1970 and compensation was paid to the declarant's mother. He produced copy of the award to substantiate this contention. The Taluk Land Board found that an extent of 18.80 Ares in Sy.No.4/2-2 was acquired for the establishment of fishermen's colony and on that ground excluded the said extent of land from the account of the declarant. It was held by the Taluk Land Board thus:

“Another contention raised by the declarant in his objection statement as per read eighth paper above that an extent of 46.5 cents (18-80 acres) in Sy.No.4/1A of Thiruvallam Village in Thiruvananthapuram Taluk was acquired by the Government before 1.1.1970 from his mother for the rehabilitation of fishermen. Hence the extent of 46.5 cents of land has to be exempted from the total extent of the declarant.

The declarant has produced a copy of A.S.No.16/69-70 from which it is seen that 18.80 Ares of land in Sy.No.4/2-2 of Thiruvallam Village has been acquired for establishment of Fishermen's Colony. Compensation paid and the land handed over to the Fisheries Department on 27.3.1969. The Award in this case is seen passed in the name of Smt.Muhammed Fathummal the mother of the declarant. This it is evident that this extent of land has never been in the possession of the declarant after

1.1.1970. The declarant is therefore entitled to get this 18.80 ares also excluded from the total extent of land held by him. The Taluk Land Board unanimously gives such a finding.”

10. I am of the view that the Taluk Land Board was not justified in reopening the case in respect of 46.5 cents of land (18.80 Ares). If this extent of land was acquired before 1.1.1970, that was a contention which the declarant might and ought to have raised before the Taluk Land Board in the objections to the draft statement. The Taluk Land Board passed the order dated 12.7.1976, which was the subject matter of C.R.P.NO.3679 of 1976 before this Court. The Taluk Land Board thereafter passed an order dated 12.8.1981, which was carried in Revision by the declarant in C.R.P.No.3422 of 1981. Objections raised by the declarant in respect of other points other than 1.28 acres covered by the purchase certificate were specifically excluded from the purview of the fresh consideration by the Taluk Land Board, when this Court disposed of C.R.P.No.3422 of 1981. Therefore, the Taluk Land Board was not justified at all in considering the question whether, in fact, the extent of 46.50 cents of land was acquired before 1.1.1970. The declarant or assessee in a ceiling case would have several objections and those objections should be raised before the Taluk Land Board. The declarant in this case raised such objections. The Taluk Land Board considered it. The matter was carried in Revision twice before this Court. This Court

specifically excluded all other objections, other than the objection in respect of 1.28 acres covered by the purchase certificate, from the scope of fresh consideration by the Taluk Land Board. The Taluk Land Board has no jurisdiction at all to reopen the other issues and exclude 46.50 cents of land. The question can be answered when we consider the issue in another angle. If the order in C.R.P.No.3422 of 1981 was fully in favour of the declarant in respect of 1.28 acres of land, the proceedings before the Taluk Land Board would have come to an end. Similarly, had this Court taken the view against the declarant finally in respect of 1.28 acres of land then also the proceedings before the Taluk Land Board would have come to an end. In these eventualities, the Taluk Land Board could not have initiated any proceeding under the Kerala Land Reforms Act or Ceiling Rules or Tenancy Rules to reopen the issue which was concluded. Viewed in that angle, I am of the view that the Taluk Land Board was not at all justified in reopening the case with respect to 46.5 cents of land and it has no jurisdiction to do so. The order of the Taluk Land Board in respect of its finding excluding 46.5 cents of land in Sy.No.4/1A from the account of the declarant is illegal, perverse and without jurisdiction. That part of the order passed by the Taluk Land Board is hereby set aside.

For the aforesaid reasons, the Civil Revision Petition is partly

allowed and the order passed by the Taluk Land Board in respect of exclusion of 46.5 cents of land in Sy.No.4/1A of Thiruvallam Village is set aside. The findings in respect of 1.28 acres of land covered by the purchase certificate issued by the Land Tribunal as well as the finding in respect of 16 cents of land in Sy.No.400 A and B are hereby confirmed. No order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 2256 OF 2000 E

ORDER

27th November, 2007
